

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE SAINT PAUL CITY COUNCIL

In Re the Application for a Taxicab  
License of Brandon Davis

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, commencing at 9:30 a.m., January 14, 2003, at the Saint Paul City Hall, Room 42, 15 West Kellogg Boulevard, Saint Paul, Minnesota. The hearing was held pursuant to Notice of Hearing dated December 11, 2002. Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, appeared on behalf of the City's Office of Licensing, Inspections and Environmental Protection (LIEP). Brandon D. Davis, 893 Fry Street, #4, Saint Paul, MN 55104, appeared on his own behalf. The hearing concluded on January 14, 2003. There were no additional submissions.

**NOTICE**

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation.<sup>[1]</sup> Pursuant to St. Paul Legislative Code § 310.05 (C-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Donald Luna, City Clerk, City of Saint Paul, 170 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF THE ISSUES**

The issues presented at this hearing were:

Is the Applicant ineligible for a taxicab license because he has a misdemeanor conviction within the last three years involving the use or threat of use of force?

**FINDINGS OF FACT**

1. Brandon D. Davis ("Applicant") applied to the City of Saint Paul ("City") for a taxicab license on September 13, 2002. As part of the application process, the City checked the Applicant's criminal background.

2. Richard Jents is a license inspector for the City and is responsible for reviewing taxicab license applications. In response to his request for information, Mr. Jents received a report from the State Bureau of Criminal Apprehension of the Applicant's misdemeanor conviction for disorderly conduct. The City Attorney's Office requested a copy of the police report that gave rise to the criminal charge, and Mr. Jents reviewed the police report. Based on the police report, he concluded that the incident involved the use of force and the threat of use of force. Since the conviction had occurred within three years, Mr. Jents recommended that the Applicant's application for a taxicab license be denied. Mr. Jents did not interview any of the witnesses to the incident that gave rise to the criminal charges.<sup>[2]</sup>

3. The Applicant was sent a Notice of Intent to Deny License Application, dated October 2, 2002.<sup>[3]</sup> The Applicant appealed the application denial.<sup>[4]</sup> Accordingly, this hearing was scheduled.<sup>[5]</sup>

4. The Applicant was employed as a dispatcher for ABC Taxi.<sup>[6]</sup> Scott J. Strouts is the chief executive officer of Drive Rite, Inc., d/b/a ABC Taxi. On August 10, 2001, Cindy Ness, now known as Cindy Ness Meek, was employed at ABC Taxi to take calls from customers requesting taxicabs and pass the requests through a window to the dispatcher who sat in the next room.<sup>[7]</sup> On that day the Applicant was working as a dispatcher, and had called in one of the drivers, Abduwahid Gedi, to discuss a violation of office policy. Mr. Gedi and the Applicant got into an argument. Ms. Ness came out of the room where she answered the telephone and got involved in the argument.<sup>[8]</sup> The Applicant called Mr. Strouts who was at his home. Mr. Strouts could hear shouting, and the Applicant asking Ms. Ness to sit down, to stay out of the dispute with Mr. Gedi, and to calm down. Mr. Strouts could hear Ms. Ness screaming and swearing. During the conversation, Mr. Strouts was disconnected. Mr. Strouts called back, the argument was continuing, and the line was disconnected again. At that point, Mr. Strouts left his home and drove to the office.<sup>[9]</sup>

5. When the police arrived, Ms. Ness was sitting outside and was bleeding from the forehead. The paramedics also arrived and recommended that Ms. Ness seek medical care for possible stitches. The Applicant was in his office, and the officers saw blood on the telephone and on a silver pair of scissors. The Applicant told the police that he had hit Ms. Ness with the telephone in self-defense because she was attacking him with the scissors. The Applicant was arrested and charged with assault of Ms. Ness and terroristic threats against Mr. Gedi.<sup>[10]</sup>

6. The Applicant admits that in the course of the argument, he struck Ms. Ness in the forehead with the telephone. He states that Ms. Ness is a very large woman, and that she had him pinned into a corner. She was brandishing a pair of scissors, screaming and swearing. He struck at Ms. Ness to protect himself. He acknowledges that Ms. Ness was bleeding from his blow and that she went to the hospital for care of the injury. He regrets that he hit her.<sup>[11]</sup>

7. Mr. Strouts has known the Applicant for eight years. The Applicant has been an excellent employee, and there have been no other instances of violence, arguments or problems with the Applicant's job performance. Mr. Strouts heard the argument over the telephone and believes that Ms. Ness inappropriately intervened in an argument between the Applicant and Mr. Gedi. Mr. Strouts believes that Ms. Ness disconnected the telephone conversations occurring during the incident.<sup>[12]</sup>

8. On September 2001, the Applicant entered into a plea agreement. The charge of terroristic threats against Mr. Gedi was dropped, and the assault charge was reduced to a lesser charge of disorderly conduct.<sup>[13]</sup>

9. The Applicant is also licensed to drive a taxicab by the City of Minneapolis.<sup>[14]</sup>

10. Any Finding of Fact more properly termed as a Conclusion is hereby adopted as a Conclusion.

### **CONCLUSIONS**

1. The Administrative Law Judge and the Saint Paul City Council have jurisdiction in this case.<sup>[15]</sup>

2. The Applicant received timely and proper notice of the hearing and the City has complied with all relevant substantive and procedural requirements of statute and rule.<sup>[16]</sup>

3. The City has authority to deny, suspend or revoke a license and to impose penalties for violation of applicable statutes and rules.<sup>[17]</sup>

4. The City has the authority to deny a taxicab license to a person who has had a misdemeanor conviction involving the use of or threat of use of force.<sup>[18]</sup>

5. The Applicant has shown by a preponderance of the evidence that he does not have a misdemeanor conviction involving the use or threat of use of force.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the City of Saint Paul GRANT the Applicant a taxicab license.

Dated this 22nd day of January, 2003.

Reported: Tape-recorded (one tape)

## MEMORANDUM

The Saint Paul Legislative Code provides that a license applicant may have no “misdemeanor convictions in the last three (3) years involving the use or threat of use of force... .”<sup>[19]</sup> The Applicant does not dispute that he has been convicted of a misdemeanor within the past three years. However, he does dispute that he used force or threatened the use of force except in self-defense. In reaching its conclusion that the offense involved the use of force or threatened the use of force, the City relied solely on the police report, and gave greater weight to Ms. Ness’s version of what occurred than it gave to the Applicant’s version. The police report includes the statements made both by Ms. Ness and the Applicant. Because of the costs of going to trial, the Applicant agreed to plead guilty to the lesser charge of disorderly conduct. As part of a plea bargain, the prosecutor dropped the terroristic threat charge, and reduced the assault charge to disorderly conduct. The crime of disorderly conduct does not require the use of force or the threat of force.

### **609.72 Disorderly conduct.**

Subdivision 1. Whoever does any of the following in a public or private place, including on a school bus, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:

- (1) Engages in brawling or fighting; or
- (2) Disturbs an assembly or meeting, not unlawful in its character; or
- (3) Engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

A person does not violate this section if the person's disorderly conduct was caused by an epileptic seizure.

The Applicant has consistently maintained that he acted in self-defense. Mr. Strouts' testimony corroborates the Applicant's version of the facts. There was no apparent reason for Mr. Strouts to protect the Applicant, and it could be to his detriment to employ a person who may be violent. Thus, Mr. Strouts' testimony was given considerable weight. The City did not offer any evidence that would corroborate Ms. Ness's version. Mr. Gedi and the Applicant have continued to work together without incident. There are no other complaints against the Applicant and no evidence of any other incident involving force or the threat of it. The plea of guilty to disorderly conduct does not presume the use of or threat of use of force.

The Applicant's taxicab license has been renewed in Minneapolis. Although this fact was given little weight, it does support the Applicant's position that he is not a danger to the public.

Based on the evidence presented, the Applicant has shown by a preponderance of the evidence that he did not commit a misdemeanor within the last three years involving the use or threat of use of force. Accordingly, it is recommended that his application for a taxicab license be granted.

**B.J.H.**

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<sup>[1]</sup> St. Paul Legislative Code § 310.05 (c-1).

<sup>[2]</sup> Test. of Richard Jents; Exs. 2, 4.

<sup>[3]</sup> Ex. 6.

<sup>[4]</sup> Ex. 8.

<sup>[5]</sup> Ex. 9.

<sup>[6]</sup> Test. of Brandon Davis.

<sup>[7]</sup> Test. of Scott Strouts.

<sup>[8]</sup> Test. of B. Davis.

<sup>[9]</sup> Test. of B. Davis; S. Strouts.

<sup>[10]</sup> Ex. 4.

<sup>[11]</sup> Test. of B. Davis.

<sup>[12]</sup> Test. of S. Strouts.

<sup>[13]</sup> Ex. 5.

<sup>[14]</sup> Test. of B. Davis.

<sup>[15]</sup> Saint Paul Legislative Code §§ 310.05, 376.16; Minn. Stat. § 14.55.

<sup>[16]</sup> See Minn. Stat. § 14.57 – 14.61; Saint Paul Legislative Code § 310.05.

<sup>[17]</sup> Saint Paul Legislative Code § 310.06.

<sup>[18]</sup> Saint Paul Legislative Code § 376.16(e)(4).

<sup>[19]</sup> Saint Paul Legislative Code § 376.16 (e) (4). The provision allows the City to grant an exception if the offense is not related to the occupation of taxicab driver, but the Applicant has not argued that the incident was unrelated to his occupation.